

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

MAR 10 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Telephone Number Portability ) CC Docket No. 95-116  
 ) DA 97-2579  
Petition for Forbearance of the )  
Cellular Telecommunications Industry )  
Association )

REPLY COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION

MCI Telecommunications Corporation ("MCI"), by its attorneys, respectfully submits these reply comments in opposition to the petition by the Cellular Telecommunications Industry Association ("CTIA") for Commission forbearance, under Section 10 of the Communications Act (47 U.S.C. § 160), from implementation of local number portability ("LNP") by cellular, PCS and other commercial mobile radio service ("CMRS") carriers.<sup>1</sup>

INTRODUCTION AND SUMMARY

The comments in this docket establish that the CTIA Petition is both a shameless reiteration of CTIA's December 1997 request for a deferment of wireless LNP implementation deadlines<sup>2</sup> and a direct challenge to the appropriateness of the Commission's earlier

---

<sup>1</sup> See *Wireless Telecommunications Bureau Seeks Comment on CTIA Petition Requesting Forbearance from CMRS Number Portability Requirements*, Public Notice, CC Docket No. 95-116, DA 98-111 (Wireless Telecommunications Bur. rel. Jan. 22, 1998).

<sup>2</sup> Cellular Telecommunications Industry Association, *Petition for Extension of Implementation Deadlines of the Cellular Telecommunications Industry Association*, Nov. 24, 1997 ("CTIA Petition"); see *Wireless Telecommunications Bureau Seeks Comment on CTIA Petition For Waiver to Extend the Implementation Deadlines of Wireless Number Portability*, Public Notice, CC Docket No. 95-116, DA 97-2579 (Wireless Telecommunications Bur. rel. Dec. 9, 1997).

determination in this very proceeding that existing CMRS competition does not justify a blanket exemption from wireless deployment of number portability. *First Report and Order* ¶¶ 146, 153, 166.<sup>3</sup> Although CTIA is correct that CMRS carriers will have to devote scarce capital to provisioning LNP, so will all other local telecommunications providers, both wireless and wireline. Having built-out their network without developing LNP capabilities—in the face of the FCC’s rulemaking to the contrary<sup>4</sup>—CMRS providers cannot now be heard to say that these business decisions should trump the public interest arguments behind requiring wireless LNP and result in the FCC’s forbearance of its LNP rules. Given the increasing importance of CMRS as a potential source of competition for traditional local telephone services, the asymmetric regulation proposed by CTIA—even for a transitional period—cannot be justified.<sup>5</sup> The CTIA Petition should be denied for the same reason that its earlier requests for a CMRS exception to LNP were rejected by the Commission.

### DISCUSSION

The fundamental rationale posited by CTIA and its supporters<sup>6</sup> is that CMRS carriers operate in a highly competitive market where consumers “value” network buildout and coverage more than LNP, and thus that number portability is not needed to meet the Act’s requirements.

---

<sup>3</sup> *Telephone Number Portability*, First Report and Order, CC Docket. No. 95-116 (rel. July 2, 1996).

<sup>4</sup> *Id.*

<sup>5</sup> See MCI Comments at 10, n.24 (pointing out that if PCS providers do not provide LNP they should not be considered “competitors” to wireline services providers pursuant to § 271(c)(2)(B)(xi) of the Act.

<sup>6</sup> The CTIA Petition was opposed by NexTel, MCI, WorldCom and TRA. It was supported by RTG, Bell Atlantic Mobile, PrimeCo, USC, UCN, SWB/PacBell, Sprint Spectrum, AirTouch, AMTA and PageNet. It should be noted that, with the exception of PageNet, all of these supporting parties would be the direct beneficiaries of a Commission forbearance decision, and that not a single consumer, regulatory or non-wireless party filed in support of the CTIA Petition. Furthermore, PCIA agreed with CTIA’s request for a five-year delay, but did not support “all

See, e.g., SWB/PacBell Comments at 7-9; PrimeCo Comments at 7-10; Bell Atlantic Mobile Comments at 2-4. Although these commenters insist that present competition in CMRS services is, of itself, reason enough to “forbear” from enforcing LNP requirements for a five-year period, they ignore two crucial facts. First, the Commission has already addressed and rejected their contention that existing CMRS competition is a sufficient reason, as a policy matter, to make LNP superfluous. MCI Comments at 3-4; see, e.g., WorldCom Comments at 4; TRA Comments at 4-5. Second, the Commission has already accounted for the costs of LNP implementation by CMRS carriers in establishing a far longer implementation period (through June 1999) for wireless providers than for wireline carriers. MCI Comments at 4; see, e.g., WorldCom Comments at 2-3; TRA Comments at 11.

As a legal matter, therefore, the CTIA Petition is not in fact a petition for forbearance because, although styled as such, it in fact asks the Commission to reconsider its implementation schedule for CMRS number portability and to extend those deadlines for another five years (until the end of the PCS buildout period).<sup>7</sup> Indeed, at least one CTIA supporter, U.S. Cellular Corp., admits that what CTIA really seeks is that the Commission “*reconsider its action*,” at least until PCS carriers have had their initial buildout period.” USC Comments at 6 (emphasis supplied). And the justification offered in support of the CTIA Petition is that the Commission erred in 1996 because, in light of subsequent events, the Commission’s conclusions about the competitive

---

of its underlying rationale,” and specifically disagreed with CTIA’s “allegation that wireless number portability is competitively insignificant.” PCIA Comments at 4-5.

<sup>7</sup> Section 10 requires that the Commission “forbear from applying any regulation” if the specified statutory criteria are met. 47 U.S.C. § 160(a). Here, CTIA is not in fact asking that the Commission forbear (or “refrain”) from applying LNP requirements, but rather only that the *First Report and Order* deadlines be extended by an

importance of LNP to wireless consumers are incorrect. These are arguments addressed to the wisdom and appropriateness of the Commission's *First Report and Order*, and under settled Commission rules cannot, at this late date, be presented without first seeking Commission approval for a late-filed reconsideration petition. MCI Comments at 2, 4-5.

Even if it were properly before the Commission under Section 10, the CTIA Petition does not meet the specific forbearance requirements set forth in the Act. The argument that CMRS providers need to apply their capital to network buildout, rather than LNP, in order to remain competitive (in the wireless market) is nothing more than an argument that the costs of LNP exceed the benefits for the wireless industry. *See* CTIA Petition at 3-6; Bell Atlantic Mobile Comments at 18 (LNP "imposes more of a financial burden than a competitive benefit"); Sprint Spectrum Comments at 3. But Section 10's reference to forbearance being in the "public interest" is not an authorization for the Commission to engage in unbounded cost-benefit analyses.<sup>8</sup> The statutory criteria require the FCC to forbear when regulation is no longer needed to meet the goals of the Act, not when as a policy matter the purported financial costs of compliance outweigh the competitive value of the regulatory requirement. MCI Comments at 9-10. Moreover, while CTIA and its supporters claim baldly that LNP implementation will be massively costly and a "tremendous financial burden," *see, e.g.*, SWB/PacBell Comments at 8, they provide no substantiation for these allegedly massive costs, and even claim that

---

additional five years. Thus, even under the plain language of Section 10, the CTIA Petition must be treated as a late-filed petition for reconsideration of the *First Report and Order* in this docket.

<sup>8</sup> Bell Atlantic Mobile cites two instances where the Commission considered compliance costs as part of its analysis of the Section 10 "public interest" factor, Bell Atlantic Mobile Comments at 17, but the Commission has (appropriately) never held that forbearance is appropriate merely where a regulation "imposes more of a financial burden than a competitive benefit." CTIA Petition at 3-6.

documentation for their deployment costs is proprietary. AirTouch Comments at 2.<sup>9</sup> And as TRA points out, profit margins for CMRS providers remain substantially higher than for other segments of the industry, suggesting that there is, in reality, no lack of operating or investment capital in the wireless industry. TRA Comments at 10 & nn. 17-18.

Under these circumstances, even if the FCC were authorized to treat Section 10 forbearance as a mere cost-benefit test, the CTIA Petition has not met its threshold burden of establishing that there are, in fact, any extraordinary network costs associated with LNP deployment by CMRS providers. NexTel, one wireless carrier departing from the CTIA mantra, states plainly that “[network] coverage does not have to be adversely affected by LNP implementation because carriers, well aware that coverage is an important competitive tool, will continue to build out their systems and improve their coverage areas to compete in the marketplace.” NexTel Comments at 4. Thus, the failure of some other PSC carriers to deploy LNP during their network buildout reflects business strategy decisions, not capital constraints.<sup>10</sup>

---

<sup>9</sup> Similar lack of substantiation exists for the claim that consumers do not want wireless LNP. *E.g.*, PrimeCo Comments at 10 (claiming that customer surveys show consumers are “far more concerned about coverage issues and price than their ability to retain their phone numbers”). The only real documentation cited in support of this assertion is that PCS carriers have been able to gain market share without LNP, *see* Bell Atlantic Mobile Comments at 10-12, yet these data are expressly reflective of “new adds,” in other words new wireless subscribers. *Id.* Furthermore, the high “churn” rate suggested as *prima facie* proof of CMRS market competitiveness, and consumers’ lack of any need for LNP, proves too much. *Id.* at 14. Even under old duopoly cellular conditions, which the Commission now recognizes did not present substantial price or service competition, the churn rates among carriers were extremely high relative to other telecommunications services.

<sup>10</sup> For instance, over the last 18 months, AirTouch has announced several network upgrades that could have included the network technologies needed to support LNP. QUALCOMM and AirTouch Announce Industry’s First Trial of CDMA Digital Data Technologies, News Release of AirTouch Communications (February 19, 1998); AIRTOUCH LAUNCHES POWERBAND DIGITAL SERVICE IN METRO DETROIT, News Release of AirTouch Communications (April 16, 1997); AIRTOUCH CELLULAR COMPLETES COMMERCIAL ROLL OUT OF CDMA POWERBAND SERVICE ACROSS LOS ANGELES, News Release of AirTouch Communications (December 4, 1996).

And even if it CTIA had substantiated its claim that LNP costs are unusually high for CMRS carriers, the costs of regulatory compliance cannot, of themselves, be sufficient to mandate forbearance, or else “every entity regulated by the Commission would make the same dubious pitch to avoid whatever regulatory requirements they happen to dislike.” WorldCom Comments at 5; *see, e.g.*, MCI Comments at 9 (without LNP “meaningful local competition will never materialize [because] all carriers would find more appealing ways to invest their limited resources”).

Finally, the CTIA Petition clearly overstates the degree of price and service competition that exists today in wireless services. While PCS entry has had the salutary effect of producing reductions in rates for incumbent cellular carriers, this in itself is not enough to characterize most wireless communications markets, today, as robustly competitive, or to remove the competitive significance of LNP among wireless carriers. Indeed, PCIA specifically *disagreed* with CTIA’s “allegation that wireless number portability is competitively insignificant.” PCIA Comments at 4-5. Additionally, that the Commission has held that CMRS providers are sufficiently competitive to forbear from rate regulation (*see* PrimeCo Comments at 7) is not the same as a conclusion that all the practices and policies of these carriers—and in particular, their practice of requiring subscribers to switch telephone numbers before changing CMRS providers—are always “just and reasonable.” MCI Comments at 6. To the contrary, it is clear, as NexTel states, that competition *within* the wireless market will be impaired (or at least not maximized) if customers can never retain their telephone numbers. NexTel Comments at 4-5. And competition *between* wireless and wireline providers for traditional POTS services will never materialize in the absence of uniform LNP requirements for all wireless and wireline carriers.

Viewed from this perspective, the CTIA Petition is remarkably narrow-minded. For instance, CTIA proposes for reasons of so-called regulatory “symmetry” that cellular carriers, in addition to PCS providers, be entitled for LNP forbearance, even though its “evidence” relates entirely to the costs of network deployment by PCS carriers. Bell-Atlantic Mobile Comments at 4 & n.4. Yet CTIA never addresses the need for symmetry between wireless and wireline providers of local telecommunications services. If the Commission creates a blanket exemption for wireless providers in the LNP area, it will have set the terrible precedent that not all competing technologies for the same services shall be treated comparably. The *First Report and Order* therefore applied LNP requirements to CMRS providers, and took their special cost and capital considerations into account in establishing a more extended implementation schedule. That approach, instead of statutory forbearance under Section 10, remains the correct answer for wireless LNP.

Yet CTIA has not made the case, either here or in its earlier petition for an extension of the LNP deadlines, that there is any public interest in allowing wireless carriers a longer “bye” from number portability. The June 1999 deadline should remain intact, and as MCI urged in connection with CTIA’s other petition, interim “milestones” should be established to ensure that CMRS providers do not continue to drag their feet on number portability and further jeopardize compliance with that deadline.<sup>11</sup> Moreover, the Commission must reflect its decision here in its

---

<sup>11</sup> The Commission should also reject any “linkage” between implementation of number pooling and the deadline for cellular implementation of LNP. This is an issue on which the wireless industry has claimed, inconsistently, that number pooling would discriminate against wireless carriers precisely because they have not yet implemented service provider LNP. Yet wireless carriers cannot have it both ways, and use their own transparent reluctance to invest in number portability technology to hold hostage efforts by state and federal regulators, the industry and consumers to enhance competition and conserve telephone numbers through number pooling.

considerations of Regional Bell Operating Company petitions for interLATA authority under Section 271 of the Act. MCI Comments at 8-9 & n.24. It would be clearly be inappropriate, and a violation of the Telecommunications Act of 1996, for the Commission to "count" PCS as local competition for purposes of its Section 271 analysis if CMRS customers do not enjoy number portability, and thus lack the same ability to change carriers as "transparently" as other local telephone service customers.

### CONCLUSION

For these reasons, and those set forth in MCI's opening comments, the Commission should deny the CTIA Petition and define intermediate milestones, with associated reporting requirements, for achieving CMRS number portability by June 1999.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORP.

By: 

Glenn B. Manishin  
Blumenfeld & Cohen - Technology Law Group  
1615 M Street, N.W., Suite 700  
Washington, D.C. 20036  
202.955.6300

Donna M. Roberts, Senior Counsel  
MCI Telecommunications Corp.  
1801 Pennsylvania Avenue, N.W.  
Washington, D.C. 20006  
202.887.2017

*Counsel for MCI Telecommunications Corp.*

Dated: March 10, 1998.



## CERTIFICATE OF SERVICE

I, Amy E. Wallace, do hereby certify that on this 10th day of March, 1998, that I have served a copy of the foregoing document via \*messenger and U.S. Mail, postage prepaid, to the following:

  
Amy E. Wallace

\*Magalie Roman Salas  
Secretary  
FCC  
1919 M Street, N.W.  
Room 222  
Washington, DC 20554

\*Richard Metzger  
Chief, Common Carrier Bureau  
FCC  
1919 M Street, N.W.  
Room 500  
Washington, DC 20554

\*Dan Phythyon  
Chief, Wireless Tele-  
communications Bureau  
FCC  
2025 M Street, N.W.  
Room 5002  
Washington, DC 20554

\*David Wye  
Wireless Telecommunications  
Bureau  
FCC  
2025 M Street, N.W.  
Room 5002  
Washington, DC 20554

\*Janice Jamison  
Wireless Telecommunications  
Bureau  
FCC  
2100 M Street, N.W.  
Room 700  
Washington, DC 20554

\*ITS  
1231 20th Street, N.W.  
Washington, DC 20037

\*Marian Gordon  
Network Services Div.  
Common Carrier Bureau  
FCC  
2000 M Street, N.W.  
Room 235  
Washington, DC 20554

\*Michael F. Altschul  
Randall S. Coleman  
Cellular Telecommunications  
Industry Association  
1250 Connecticut Ave., N.W.  
Suite 200  
Washington, DC 20036

Richard S. Whitt  
Anne F. La Lena  
WorldCom, Inc.  
1120 Connecticut Avenue, N.W.  
Suite 400  
Washington, DC 20036

Caressa D. Bennet  
Dorothy E. Cukier  
Bennet & Bennet, PLLC  
1019 19th Street, N.W.  
Suite 500  
Washington, DC 20036

Peter M. Connolly  
Koteen & Naftalin  
1150 Connecticut Avenue, N.W.  
Washington, DC 20036

William J. Sill  
Jill Canfield  
Evans & Sill, P.C.  
919 18th Street, N.W.  
Suite 700  
Washington, DC 20006

Carol L. Tacker  
Vice President-General Counsel  
Southwestern Bell Mobile Systems  
17330 Preston Road Suite 100A  
Dallas, TX 75252

Joseph R. Assenzo  
General Attorney  
Sprint Spectrum L.P. d/b/a Sprint  
PCS  
4900 Main Street 12th Floor  
Kansas City, MO 64112

David L. Sieradzki  
Hogan & Harston, L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004

Robert S. Foosaner  
Lawrence R. Krevor  
Laura L. Holloway  
Nextel Communications, Inc.  
1450 G Street, N.W.  
Suite 425  
Washington, DC 20005

Michael J. Shortley, III  
Frontier Corporation  
180 S. Clinton Avenue  
Rochester, NY 14646

Jeanne A. Fischer  
Bruce E. Beard  
Southwestern Bell Mobile Systems,  
Inc.  
13075 Manchester Road  
St. Louis, MO 63131

Betsy Stover Granger  
Senior Counsel  
Southwestern Bell Mobile Systems/  
Pacific Bell Mobile Services  
4420 Rosewood Drive  
Pleasanton, CA 94588

Kathleen Q. Abernathy  
David A. Gross  
AirTouch Communications  
1818 N Street, N.W.  
Suite 800  
Washington, DC 20036

Mark J. Golden  
Senior Vice President, Govt. Relation  
Personal Communications Industry  
Association  
500 Montgomery Street Suite 700  
Alexandria, VA 22314-1561

Andre J. Lachance  
GTE Service Corporation  
1850 M Street, N.W.  
Suite 1200  
Washington, DC 20036

Judith St. Ledger-Roty  
Peter Batacan  
Kelley Drye & Warren, LLP  
1200 19th Street, N.W., Suite 500  
Washington, DC 20036

Elizabeth R. Sachs, Esq.  
Lukas, Nace, Gutierrez & Sachs  
111 Nineteenth Street, N.W.  
12th Floor  
Washington, DC 20036

John T. Scott, III  
Crowell & Moring LLP  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004